

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Ruey YU <i>et al.</i>)	Examiner: ROYDS, L. A.
)	
Application No.: 10/792,273)	Group Art Unit: 1614
)	
Filed: March 4, 2004)	Conf. No. 4235
)	
For: Bioavailability and improved delivery of alkaline pharmaceutical drugs		

**AMENDMENT AND RESPONSE TO RESTRICTION/ELECTION OF SPECIES
REQUIREMENT**

Mail Stop Amendment

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In response to the Office Action dated October 25, 2006, applicants reply as follows.

The Action asserts that the Petition to Make Special was granted "contingent upon Applicant's election without traverse of a single invention" (emphasis in original). Applicants respectfully submit that this is not accurate. MPEP §708.02(IV) pertains to accelerated examination, and not to petitions to make special according to age. The present application has been made special because of the applicants' age, not under the new accelerated examination procedure. There should be no contingency, applicants traverse the restriction requirement, and intend on filing a petition in the near future in this regard.

Turning now to the merits of the restriction requirement, applicants elect with traverse, Group I, claims 2-4, drawn to an alkyl alpha hydroxyacid. The restriction requirement between Groups I-XIII is traversed because the Action fails to set forth how each group is separate and distinct from the remaining groups. Applicants do not traverse the restriction requirement between Groups I-XI and XII, and between Groups I-XI and XIII. Rather, applicants traverse the restriction requirement between Groups I-XI.

Applicants respectfully submit that the Action fails to describe how Group I is separate and distinct from, for example, Group II, or how Group III is separate and distinct from, for example, Group II. Rather, the Action merely lumps Groups I-XI into one paragraph and makes the incorrect allegation that the compositions of these groups “are chemically and structurally distinct from one another such that the active agents required to form each of the compositions of each of the groups are distinctly different from one another” (Action, at pages 5 and 6). The specification at page 9, paragraph 0024 describes how the active agents that form the molecular complex are the same for each of the acids, lactones, etc., recited in the claims associated with Groups I-XI.

It is applicants’ understanding that to establish an adequate basis for restriction between the respective groups, the Action must set forth the reasons why each group is patentably distinct from the remaining groups. This the Action has failed to do. Accordingly, applicants traverse the restriction requirement, and hereby preserve their rights to file a petition traversing the restriction requirement in the near future.

The Action also communicates on pages 6-9, an election of species requirement, which closely parallels the restriction requirement. The accompanying amendment cancels claim 30, thereby rendering moot this portion of the election of species requirement. With respect to the specific alkyl alpha hydroxyacid, applicants hereby elect, with traverse, glycolic acid, for examination. Claims 1-4, 29, and 31-36 are believed to read on the elected species. Glycolic acid is disclosed in original claims 4 and 29, as well as on page 12, paragraph 0031, second line.

Applicants traverse the election of species requirement since the Action has failed to provide any rationale as to how or why the respective species are patentably distinct. While the claims may encompass a large number of compounds, these compounds all share a common structural feature, and it is that structural feature that contributes to the formation of a molecular complex with an alkaline pharmaceutical drug (*see*, specification at page 9, para. 0024).